

NTSB Order No. EA-4873

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 28th day of December, 2000

Respondent .

Docket SE-15896

The respondent has appealed from the oral initial decision Administrative Law Judge William R. Mullins rendered in this proceeding on June 6, 2000, at the conclusion of an evidentiary hearing.¹ By that decision, the law judge affirmed an emergency order of the Administrator that revoked the respondent's mechanic certificate on allegations that he had violated section 43.12(a)(1) of the Federal Aviation Regulations ("FAR"), 14

¹An excerpt from the hearing transcript containing the initial decision is attached.

C.F.R. Part 43.² For the reasons discussed below, the appeal will be denied.³

The Administrator's March 16, 2000 Emergency Order of Revocation alleges, among other things, the following facts and circumstances concerning the respondent:

1. You are now, and at all times mentioned herein were, the holder of Mechanic Certificate No. 001800257, with airframe and powerplant ratings, and an owner of Arizona Aviation Avionics, LCC, an FAA-certificated Repair Station.
2. From at least December 17, 1999 through January 1, 2000, America West Airlines, Inc. submitted aircraft to Arizona Aviation Avionics, LCC, for performance of maintenance on passenger entertainment systems.
3. From at least December 17, 1999, Arizona Aviation Avionics, LCC knew it was not rated to perform maintenance on said entertainment systems, and advised the FAA that it would have the work accomplished by appropriately rated FAA certificated mechanics.
4. On or about December 17, 1999, you told Neal Davis, a certificated repairman for Arizona Aviation Avionics, LCC, to use your mechanic certificate number and to sign your name to documents reflecting performance of maintenance on said passenger entertainment systems for America West Airlines, Inc.
5. In accordance with your instructions, during the period from December 17, 1999, through January 1, 2000, Mr. Davis signed your name and certificate number on at least thirteen (13) maintenance entries for said entertainment systems, when you had neither performed nor supervised the performance of said maintenance.

²FAR section 43.12(a)(1) provides as follows:

§ 43.12 Maintenance records: Falsification, reproduction, or alteration.

- (a) No person may make or cause to be made:
- (1) Any fraudulent or intentionally false entry in any record, or report that is required to be made, kept, or used to show compliance with any requirement under this part....

³The Administrator filed a reply brief opposing the appeal.

6. Each of said maintenance entries were required by Part 43 of the Federal Aviation Regulations to document proper performance of maintenance on said aircraft passenger entertainment systems.

The law judge determined, as a matter of credibility, that Neal Davis was telling the truth when he testified that respondent, at an impromptu December 17, 1999 company meeting also attended by the repair station's two other co-owners,⁴ had instructed him to use Wade's name and mechanic certificate number to sign off work on the America West passenger entertainment systems. This determination reflected a rejection of respondent's testimonial denial of the allegation that he had so directed Mr. Davis and, at the meeting's end, had given Davis his certificate number so that he could carry out the direction.⁵

On appeal, respondent identifies various factors that he submits support a conclusion that his account of the meeting should have been credited over Davis'. Those factors do not, however, demonstrate that the law judge's credibility choice was arbitrary or capricious, or that he incorrectly weighed the interests that may have influenced the testimony of each witness.⁶ Rather, they simply establish that the law judge, had

⁴The meeting was apparently convened to consider, among other business matters, how Arizona Aviation Avionics would fulfill its assurance to the FAA that it would correct an improper maintenance sign off practice. (See paragraph 3, above.)

⁵The other owners did not deny that respondent had suggested at the meeting the conduct of which the Administrator accuses him in this proceeding. They maintained, nevertheless, that they did not take the suggestion seriously.

⁶See Administrator v. Klock, 6 NTSB 1530, 1531 (1989)(Law

he found respondent to be a more believable witness than Mr. Davis, could have ruled differently on the same record, not that he erred by ruling the way he did. Respondent has not, in other words, demonstrated a basis for disturbing the credibility assessments that the law judge, within his exclusive province as a factfinder observing witness demeanor, had to make to resolve the contradictory testimony concerning the uncontroverted fact that the respondent's signature and certificate number had been wrongly used.

We are also not persuaded by respondent's contention that, assuming a violation was properly found, the sanction should have been no more than a suspension of his certificate. As one of three principals in charge of the repair station's daily operations,⁷ respondent shared responsibility for ensuring that the company's employees discharged their maintenance and related record-keeping duties in compliance with all applicable rules and policies. We have no hesitancy in holding that an individual occupying such a position who suborns maintenance record fraud by an employee does not possess the care, judgment and responsibility expected of a certificate holder. Revocation is therefore the appropriate sanction.

(..continued)

judge's credibility choice is "not vulnerable to reversal on appeal simply because respondent believes that more probable explanations...were put forth....").

⁷See Administrator v. Arizona Aviation Avionics, NTSB Order EA-4861 (served October 17, 2000), in which conduct of respondent and the two co-owners was imputed to the repair station itself.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied; and
2. The initial decision and the emergency order of
revocation are affirmed.

HALL, Acting Chairman, HAMMERSCHMIDT, GOGLIA, BLACK, and CARMODY,
Members of the Board, concurred in the above opinion and order.